

HOUSE BILL 241
By Patton

AN ACT to enact the Tennessee Personal and Commercial
Computer Protection Act of 2001.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as the Tennessee Personal and Commercial
Computer Protection Act of 2001.

SECTION 2. For purposes of this act, unless the context otherwise requires:

(1) "Computer" means an electronic, magnetic, optical, hydraulic or
organic device or group of devices which, pursuant to a computer program, to
human instruction, or to permanent instructions contained in the device or group
of devices, can automatically perform computer operations with or on computer
data and can communicate the results to another computer or to a person. The
term "computer" includes any connected or directly related device, equipment or
facility which enables the computer to store, retrieve or communicate computer
programs, computer data or the results of computer operations to or from a
person, another computer or another device.

(2) "Computer data" means any representation of information,
knowledge, facts, concepts or instructions which is being prepared or has been
prepared and is intended to be processed, is being processed or has been

processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards or stored internally in the memory of the computer.

(3) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one (1) computer with the capability to transmit data among them through the communications facilities.

(4) "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof; and includes, but is not limited to, communication with, storage of data to or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

(5) "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one (1) or more computer operations.

(6) "Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services or information or data stored in connection therewith.

(7) "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program, or computer network.

(8) "Electronic mail service provider" means' any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send or receive electronic mail.

(9) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computerized representation thereof.

(10) "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee or licensee of computer data, computer programs or computer software.

(11) "Person" shall include any individual, partnership, association, corporation or joint venture.

(12) "Property" shall include:

- (a) real property;
- (b) computers and computer networks;
- (c) *financial* instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:
 - (i) tangible or intangible;
 - (ii) in a format readable by humans or by a computer;
 - (iii) in transit between computers or within a computer network or between any devices which comprise a computer; or
 - (iv) located on any paper or in any device do which it is stored by a computer or by a human; and

SECTION 3.

(a) A person "uses" a computer or computer network when such person:

(1) attempts to cause or causes a computer or computer network to perform or to stop performing computer operations;

(2) attempts to cause or causes the withholding or denial of the use of a computer, computer network, computer program, computer data or computer software to another user; or

(3) attempts to cause or causes another person to put false information into a computer.

(b) A person is "without authority" when (1) such person has no right or permission of the owner to use a computer or such person uses a computer in a manner exceeding such right or permission or (2) such person uses a computer, a computer network or the computer services of an electronic mail service provider to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

(c) Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

SECTION 4.

(a) It shall be unlawful for any person to use, a computer or computer network without authority and with the intent to:

(1) temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;

(2) cause a computer to malfunction, regardless of how long the malfunction persists;

(3) alter or erase any computer data, computer programs, or computer software;

(4) effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

(5) cause physical injury to the property of another;

(6) make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs or computer software residing in, communicated by or produced by a computer or computer network; or

(7) falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

(b) It shall be unlawful for any person knowingly to sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which (i) is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information; (ii) has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or (iii) is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(c) Any person who violates this section is guilty of computer trespass. Computer trespass is punished according to the damage to the property of another caused by the offense and shall be graded as provided in TCA 39-14-105.

(d) Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services or computer software or to create any liability by reason of terms or conditions adopted by or technical measures implemented by, a Tennessee-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this act.

SECTION 5.

(a) Any person whose property or person is injured by reason of a violation of any provision of this act may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" shall include loss of profits.

(b) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10) for each and every unsolicited bulk electronic mail message transmitted in violation of this act, or one thousand dollars (\$1,000) per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited bulk electronic mail over its computer network.

(c) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs and may elect, in lieu of actual damages, to recover the greater of ten dollars (\$10) for each and every unsolicited bulk electronic mail message transmitted in violation of this article, or one thousand dollars (\$1,000) per day.

(d) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party. The provisions of this article shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

SECTION 6. This act shall take effect July 1, 2001, the public welfare requiring it.